



1717 Pennsylvania Avenue,
N.W.
12th Floor
Washington, D.C. 20006

Tel 202 659 6600
Fax 202 659-6699
www.eckertseamans.com

James C. Falvey
jfalvey@eckertseamans.com
Phone: 202 659-6655

March 20, 2013

Notice of Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200; *Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

Dear Ms. Dortch:

On March 18, 2013, John Murdock, President, and Greg Rogers, Deputy General Counsel, Bandwidth.com, Inc.; Michael Mooney, General Counsel, Regulatory Policy, Andrea Pierantozzi, Vice President, Voice Services, and Michael Shortley, III, Vice President, Legal; and the undersigned ("CLEC Participants") met with Commissioner Ajit Pai and Nicholas Degani, Legal Advisor to Commissioner Pai. In the meeting, the CLEC Participants reiterated their significant concerns regarding the series of voice over Internet protocol ("VoIP") provider ("Petitioners") petitions seeking limited waiver of Section 52.15(g)(2)(i) to obtain direct access to number resources, and the order currently on circulation.

CLEC Participants discussed their opposition to issuing waivers prior to the completion of a Notice of Proposed Rulemaking ("NPRM"), a rulemaking that is necessary to consider fully the operational, legal, and regulatory implications of issuing numbering resources directly to non-carrier providers. Permitting any significant traffic flows from non-carrier providers prior to the completion of a rulemaking will cause industry disruption at a time when there are already significant volumes of phantom traffic in the industry. CLEC Participants emphasized that, if the Commission were to proceed with a trial, as we understand the order on circulation contemplates, it should be strictly limited in duration and scope.

CLEC Participants believe that, if a trial is conducted, it must be completed prior to the initiation of the NPRM for two reasons. First, should there be a trial, it needs to serve a clearly

defined purpose which is presumably to provide factual input to the NPRM. Any trial should therefore be for a specifically defined period of time, and should be completed prior to the initiation of the NPRM. There should also be clear Commission authority to reclaim numbers that are used in the trial, as necessary, as well as a safety valve process, whereby if the trial is not proceeding smoothly the test can be halted at any time. Any trial should be of limited scope, consistent with the concept that the primary purpose of the trial should be to provide input to the NPRM. In addition, the trial should be geographically diverse, and the Commission should take the lead in ensuring that number resources are tested out across a wide variety of carrier serving areas, as well as rural and urban rate centers.

Second, if a trial were conducted by Vonage and/or other providers in parallel with an NPRM, it would fatally undermine the due process required in a rulemaking proceeding. By considering numbering issues critical to the future of the industry while one or several providers are conducting live customer tests on the same topic, the Commission would undermine the integrity of the rulemaking proceeding. The provider or providers conducting the tests would have an unfair advantage in terms of access to information and data, and all other rulemaking participants would be left on the outside looking in. The only nondiscriminatory manner in which to conduct a test is to complete the test first, and then make the data from the test available to all rulemaking participants on a fully transparent and equitable basis.

Furthermore, if the test is open-ended in any way, without a clear end date, the Commission would be pre-judging, without the necessary procedural vehicle of a rulemaking, the decision as to whether non-carrier providers should have direct access to number resources. The CLEC Participants do not support *ad hoc* testing with one provider, but if testing is to occur, the Commission must not open the floodgates to multiple non-carrier providers and trigger an all out race to the bottom by non-carriers looking to gain any advantage possible in the marketplace. To leave open such a possibility before the completion of a rulemaking would again be prematurely concluding that granting non-carriers direct access to number resources is the right decision, and would force carriers across the industry to handle large volumes of traffic without any clearly defined rules. In the NPRM itself, the Commission should also consider defining a clear standard for when a non-certificated non-carrier is qualified to obtain direct access to number resources. The Commission must establish such a nondiscriminatory standard in a rulemaking prior to granting any further waivers.

Ms. Marlene H. Dortch
March 20, 2013
Page 3 of 3

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey
James C. Falvey
Counsel for CLEC Participants

cc: Commissioner Pai
Nicholas Degani